A practical objection to the law as settled on this point arises where the chose in action is represented by marketable securities. To allow garnishment or attachment by service on the debtor alone would impair the marketability of the documents. Accordingly it has been suggested that in such cases the *locus* of the documents should determine the *situs* of the debt.[12] But this distinction does not commend itself. The document, it is true, is a valuable *res*, but the debt remains enforceable only at the debtor's domicile; hence the reason for fixing the *situs* of the debt at the debtor's domicile is not affected. However, the state in which the documents are found has jurisdiction *in rem*, so that control over the documents is thus virtually a control over the debt.

There are, however, at least two instances where the courts of the debtor's domicile rightly exercise jurisdiction without control of the creditor's person. In both, the connection of the state with the creation of the obligation has been intimate. Thus a state rendering a judgment undoubtedly has jurisdiction over the judgment debt.[13] So, too, a state, having control over the relations between a corporation which it has created and the stockholders, has the sole right to determine questions of stock ownership raised by dispute as to the validity of a transfer,[14] or as to which one of two claimants shall vote certain shares. Thus a court of equity has been rightly held to have jurisdiction to declare a trust of certain shares, the legal ownership of which was in a non-resident holder, but the beneficial interest in which was claimed by the corporation issuing them. *Amparo Mining Co.* v. *Fidelity Trust Co.*, 73 Atl. 249 (N. J., Ct. App.).

POWER OF THE INTERSTATE COMMERCE COMMISSION TO FIX A RATE ON THE PRINCIPLE OF EQUALIZING ADVANTAGES. — By the Hepburn Act of 1906, amending the Interstate Commerce Act, power was given to the Interstate Commerce Commission "to determine what will be the just and reasonable rate or rates to be thereafter observed . . . as the maximum to be charged."[1] Although this section has been the object of much discussion by legal writers and economists, it has as yet come before the courts in very few instances. In the recent case of *Chicago, Rock Island & Pacific Ry. Co.* v. *Interstate Commerce Commission*, 171 Fed. 680 (Circ. Ct., N. D. Ill.), the court placed a very important limitation upon the power of the Commission under the section quoted. A base rate had been ordered from the Atlantic seaboard to Missouri River cities, which was lower than the sum of the rates from the seaboard to the Mississippi and from the Mississippi to the Missouri River cities. In the view taken by the court the Commission's sole purpose in making this rate was more nearly to equalize, in certain competitive territory, the advantage possessed by cities of the Middle West over the Missouri River cities, by reason of their location.[2]

[12] See Dicey, Conf. of Laws, 1 Am. ed. pp. 319–320. *Cf.* Plimpton *v.* Bigelow, 93 N. Y. 592; Bank *v.* Mather, 60 Minn. 362.

[13] Renier *v.* Hurlbut, 81 Wis. 24.

[14] Masury *v.* Arkansas Bank, 87 Fed. 381; Hammond *v.* Hastings, 134 U. S. 401. But see Kerr *v.* Urie, 86 Md. 72.

[1] U. S. Comp. St. Supp. 1907, p. 900.

[2] In the 22d Annual Report of the Commission (1908), p. 23, this order is referred

It was held that the Commission was without power to make an order on such a basis, not because of any prohibitive provision in the Act, but merely because the majority of the court thought that Congress could never have intended the Commission to have such power. Conjecture as to the intent of the legislature which cannot be gathered from the words used is always a dangerous method of statutory construction.[3] But even though the intent of the legislature be looked into in this instance, as the principle of equalizing advantages (which is merely a phase of the principle of charging what the traffic will bear) [4] has been widely used by the railroads and has been an important factor in the development of the country,[5] it is extremely improbable that such a principle of rate making was not in the minds of the legislature when the Act was passed. In fact, section 3 of the Act is directed against abuse of its exercise by undue discrimination between localities.[6]

Nor is there any rule of law opposed to this theory of rate making. Members of the Commission have at times expressed opinions against it,[7] but rates adopting it are upheld by the courts.[8] Moreover, the argument that the power of making rates on this theory cannot safely be entrusted to private hands [9] does not apply to a rate made by the Commission. So that even if the courts have jurisdiction to review an order of the Commission based on a misconception of the law,[10] there would be no such jurisdiction in this case. Whether the principle of rate making under discussion is a sound one, is another question. Some writers, instead of condemning it, regard it, if properly applied, as the only practical system.[11] But the solution of the economic problem of devising a proper rate-making scheme should lie with the legislature rather than with the courts; and it has often been pointed out that the members of the Interstate Commerce Commission, in the performance of their function of fixing rates, are legislators.[12]

PROMISES TO ANSWER FOR THE DEBT, DEFAULT, OR MISCARRIAGE OF ANOTHER. — Under the English Statute of Frauds, which has been gen-

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to as an application of the rule that the through rate for the long haul should be less than the run of the locals for the two short hauls.

[3] 2 Sutherland, Statutory Construction, 2 ed., § 388.

[4] Beale & Wyman, Rate Regulation, § 486.

[5] Noyes' American Railroad Rates, p. 55.

[6] 3 U. S. Comp. St. 1901, p. 3155.

[7] Freight Bureau of the Cincinnati Chamber of Commerce *v.* Cincinnati, New Orleans & Texas Pacific Ry. Co., 7 Int. Com. Rep. 180; In the Matter of Export Rates from Points East and West of the Mississippi River, 8 Int. Com. Rep. 185.

[8] Texas & Pacific Ry. Co. *v.* Interstate Commerce Commission, 162 U. S. 197; Interstate Commerce Commission *v.* Southern Ry. Co., 122 Fed. 800.

[9] See 20 HARV. L. REV. 521.

[10] This jurisdiction was taken in Stickney *v.* Interstate Commerce Commission, 164 Fed. 638; Missouri, Kansas & Texas Ry. Co. *v.* Interstate Commerce Commission, 164 Fed. 645. But the jurisdiction of the courts to review these orders, except on constitutional grounds, is doubtful. For a discussion of this question see 32 Nat. Corp. Rep. 877.

[11] Noyes' American Railroad Rates, p. 55.

[12] See Interstate Commerce Commission *v.* Cincinnati, New Orleans & Texas Pacific Ry. Co., 167 U. S. 479; Interstate Commerce Commission *v.* Alabama Midland R. R. Co., 168 U. S. 144; Southern Pacific Co. *v.* Colorado Fuel & Iron Co., 101 Fed. 779. But see 23 HARV. L. REV. 12.